IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Chhaju Ram Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.460/2003)

2. Ladu Ram & Others Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.382/2003)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 28-2-2003 in Sessions Case No.17/2002 passed by Sh. Yashpal Singh Chaudhary, RHJS, Additional Sessions Judge No.2, Sikar Camp Sri Madhopur.

Date of Judgment: March 15, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. H.C.Mourya, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Chhaju Ram, Ladu Ram Teeja Devi, Birdi Chand, shankar Lal and Makhan Lal, the appellants herein, were put to trial before learned Additional Sessions Judge No.2, Sikar camp Sri Madhopur, who vide judgment dated February 28, 2003 convicted and sentenced them as under:-

Chhaju:
U/s.304B IPC:
To undergo rigorous imprisonment for ten years and fine of Rs.5,000/- in default to further suffer thirty days simple imprisonment.

U/s.498A IPC:
To undergo three years rigorous imprisonment and fine of Rs.1000/- in default to further suffer fifteen days simple imprisonment.

U/s.201 IPC:

Each to undergo three years rigorous imprisonment and fine of Rs.1000/- in default to further suffer fifteen days simple imprisonment.

Ladu Ram Teeja Devi, Birdi Chand, Shankar Lal and Makhan Lal:
U/s.201 IPC:

Each to undergo three years rigorous imprisonment and fine of Rs.1000/- in default to further suffer fifteen days simple imprisonment.

The substantive sentences were ordered to run concurrently.

2. The informant Tota Ram (Pw.5) submitted a written report at Police Station Sri Madhopur on July 8, 2002 with the averments that his daughter Sunita @ Dhanni Devi (since deceased) who was married to appellant Chhaju two and a half years back was killed in connection with demand of dowry on July 7, 2002 and she was hurriedly cremated. On that report case was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.2 Sikar Camp Srimadhopur. Charges under sections 498A and 304B were framed against Chhaju and other appellants were charged under section 201 IPC. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 12 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. I have heard learned counsel for the parties and with their assistance weighed the material on record.

4. Factual situation emerges from the material on record may be summarized thus:-

(i) Sunita died within three years of her marriage.

(ii) She was subjected to harassment by her husband (appellant Chhaju) in connection with demand of dowry.

(iii) Before cremating the dead body information of death of Sunita was communicated to her parents.

5. The expression `dowry' is defined by Section 2 of the Dowry Prohibition Act,1961 (for short `the Act'), as meaning anything which is given either directly or indirectly, by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person" at or before or after the marriage as consideration for the marriage of the said parties. The act has been amended by Act 63 of 1984 and Act 43 of 1986. Formerly dowry was defined as property given as consideration for the marriage but the words "as consideration for the marriage" have been omitted and substituted by the words "in connection with the marriage". Now dowry means any property given or agreed to be given by the parents of a party to the marriage at marriage or before marriage or at any time after marriage in connection with the marriage.

6. Considering the definition of dowry their Lordships of Supreme Court in Reema Aggarwal Vs. Anupam (2004)3 SCC 199, indicated thus:-

(Para 14)

> "The definition of the term "dowry" under Section 2 of the Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of

> the said parties" would become "dowry" punishable under the Dowry Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage".

7. Interpreting the words "in connection with the marriage of the said parties", the Apex court in Satvir Singh Vs. State of Punjab (2001)8 SCC 633, propounded as under:-

> "The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act,1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".
>
> (Emphasis supplied)

8. The word "agreement" referred in Section 2 has also been considered in Pawan Kumar Vs. State of Haryana (1998)3 SCC 309, by their Lordships of Supreme Court and it was observed as under:-

(Para 16)

> "Demand for dowry neither conceives nor would conceive of any agreement. The word "agreement" referred to in Section 2 of the Dowry Prohibition Act,1961 has to be inferred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with

> the other provisions of the Act including Section 3, which refers to giving or talking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry."

9. That takes me to the question as to whether the appellants have committed the dowry death of Sunita? Section 113-B of the Evidence Act provides that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

10. Analysing the words `soon before her death their Lordships of the Supreme Court in Kamesh Panjiyar Vs. State of Bihar (2005)2 SCC 388, held as under:-

> "A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that "soon before her death", the victim was subjected to cruelty or harassment "for or in connection with the demand of dowry". Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before her death" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to

be led by prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test as indicated by the said expression both for the proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act. A reference to the expression “soon before” used in Section 114 illustration (a) of the Evidence Act is relevant. The determination of the period which can come within the term “soon before” under section 114 illustration (a) is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

(Emphasis supplied)

11. In K.Prema S.Rao Vs. Yadla Srinivasa Rao (AIR 2003 SC 11) their Lordships of Supreme Court examined the words `soon before her death' and observed as under:-

> “To attract the provisions of S.304-B, IPC, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment `in connection with the demand for dowry'. There is no evidence on record to show that the land was demanded as a dowry. It was given by the father to the deceased in marriage ritual as “pasupukumuma”. The harassment or cruelty meted out to the deceased wife by the husband after the marriage to force her to transfer the land in his name was `not in connection with any demand for dowry'. One of the main ingredients of the offence of “demand of dowry” being absent in this case, the

accused could not be said to have committed offence under S.304-B."

12. A bare look at the evidence on record shows that the harassment or cruelty meted by the deceased was in connection with any demand of dowry. Since the deceased died just within three years of her marriage is a material to prove that before her death Sunita was subjected to cruelty or harassment for or in connection with the demand of dowry. Therefore the appellant Chhaju Ram was rightly convicted under sections 304B and 498A IPC. However looking to age of appellant Chhaju Ram, I am of the opinion that imposition of seven years imprisonment would meet the ends of justice.

13. Charge under section 201 IPC however could not be established against appellants Chhaju Ram, Ladu Ram, Teeja Devi, Bridi Chand, Shankar Lal and Makhan Lal beyond reasonable doubt and their conviction under the said section cannot be upheld.

14. For these reasons, I dispose of instant appeals in the following terms:-

(i) I allow the appeal of appellants Ladu Ram Teeja Devi, Birdi Chand, shankar Lal and Makhan Lal and acquit them of the charge under section 201 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) Appeal of appellant Chhaju Ram is partly allowed and while maintaining his conviction under section 304B IPC I reduce his sentence from ten years rigorous imprisonment and fine of Rs.5000/- to seven years rigorous imprisonment, the minimum sentence provided under sub section 2 of section 304B IPC. I

however maintain his conviction and sentence under section 498A IPC. Appellant Chhaju Ram stands acquitted of the charge under section 201 IPC. Sentences awarded to appellant Chhaju Ram shall run concurrently.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

arn/